

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL NO. 1:07CV75

RAYMOND LESLIE CRUIT, JR.,)

Plaintiff,)

Vs.)

THE UNITED STATES GOVERNMENT,))

et al.,)

Defendants.)

ORDER OF DISMISSAL

THIS MATTER is before the Court on the Plaintiff's application to proceed without the prepayment of fees and his proposed complaint. The undersigned grants the application but *sua sponte* dismisses the action pursuant to 28 U.S.C. § 1915(e)(2).

Section 1915 provides, in pertinent part, that "[n]otwithstanding any filing fee, or any portion thereof, that may have been paid, the court *shall dismiss the case at any time* if the court determines that . . . the action [] is frivolous or malicious [or] fails to state a claim on which relief may be granted" **28 U.S.C. § 1915(e)(2) (emphasis added)**. Under this statutory proscription, the district court must dismiss such a case and it is

the intent of Congress that such dismissals occur prior to service of the complaint on defendants. ***Cochran v. Morris*, 73 F.3d 1310, 1315 (4th Cir. 1996); *White v. White*, 886 F.2d 721 (4th Cir. 1989).** “Legally frivolous claims are based on an ‘indisputably meritless legal theory’ and include ‘claims of infringement of a legal interest which clearly does not exist.’” ***Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994).**

This standard encompasses complaints that are either legally *or* factually baseless. The statutory language dictates a high degree of deference to the discretion of district courts. A claim can be dismissed whenever a district court is “satisfied” the claim is frivolous. Moreover, the term frivolousness itself contemplates deference because “as a practical matter, it is simply not susceptible to categorical definition.” . . . “[D]iscretion granted to district judges to screen out meritless cases,” is necessary to prevent the abuse of free court access by litigants who possess both time and dissatisfactions in abundance.

***Cochran, supra*, at 1316 (quoting *Adams, supra*, at 74, and *Nasim v. Warden, Maryland House of Correction*, 64 F.3d 951, 953 (4th Cir. 1995)).**

The Court has reviewed the proposed complaint and finds that it is frivolous and no cause of action has been stated. As a result, the complaint will be dismissed.

IT IS, THEREFORE, ORDERED that the Plaintiff's application to proceed without the prepayment of fees is hereby **GRANTED**; and

IT IS FURTHER ORDERED that the complaint is hereby **DISMISSED WITH PREJUDICE** as frivolous and for failure to state claims.

Signed: February 27, 2007

A handwritten signature in black ink, appearing to read "Lacy H. Thornburg", written over a horizontal line.

Lacy H. Thornburg
United States District Judge

